

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-217297**DATE:** June 24, 1985**MATTER OF:** Frank A. Kraus

DIGEST: Employee transferred to the location where he had been assigned to temporary duty may not be paid temporary quarters subsistence expenses in connection with his and his family's continued occupancy of the rental apartment in which they had resided during the temporary duty assignment. The record does not establish that the employee or his family vacated and then reoccupied that residence.

An employee may not be paid temporary quarters subsistence expenses when he is transferred to the duty station at which he is assigned to temporary duty and thereafter continues to occupy the same rental apartment that he and his family occupied while on temporary duty.^{1/} The employee has not presented evidence to substantiate his claim that he and his family vacated the residence in which they were residing at the time of the transfer.

BACKGROUND

Mr. Frank A. Kraus, an employee of the National Aeronautics and Space Administration (NASA), whose duty station was Kennedy Space Center, Florida, was assigned to extended temporary duty at Vandenberg Air Force Base, California, beginning in May 1983. Mr. Kraus was one of several NASA employees detailed to Vandenberg to assist in completion of the shuttle launch facilities. During the period of this temporary duty assignment, Mr. Kraus rented a furnished apartment in Lompoc, California. When completion of the

^{1/} Mr. Albert C. Cleveland, an authorized certifying officer with the National Aeronautics and Space Administration, John F. Kennedy Space Center, Florida, has requested an advance decision on the temporary quarters subsistence expense claim submitted by Mr. Frank A. Kraus.

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shuttle launch facilities was extended, NASA transferred the detailed employees, including Mr. Kraus, to Vandenberg Air Force Base.

Mr. Kraus and his wife left Lompoc, California, on May 5, 1984, and returned to Florida to handle official and personal matters relating to the transfer. On May 16 he was issued permanent change-of-station orders which included authorization for temporary quarters subsistence expenses. When Mr. Kraus and his wife returned to Lompoc on May 25, they occupied the same apartment they had left on May 5.

The employee has submitted a claim for temporary quarters subsistence expenses for a 60-day period beginning May 26 in the amount of \$3,111.25. The certifying officer has requested a decision in the matter in view of our holding in William B. Hendricks, B-199525, May 6, 1981.

DISCUSSION

A Federal employee who relocates in connection with a permanent change of station may, under the provisions of 5 U.S.C. § 5724a(a)(3), be reimbursed for subsistence expenses while occupying temporary quarters. Implementing regulations are found at Part 5, Chapter 2 of the Federal Travel Regulations (Supp. 4, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1983) (FTR). FTR para. 2-5.2c states in part:

"c. What constitutes temporary quarters.
Generally, the term 'temporary quarters' refers to lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied when the transfer was authorized. * * *

The employee claims that he vacated the apartment in Lompoc on May 5, 1984, when he returned to Florida. According to Mr. Kraus the particular apartment complex is run like a motel and individual apartments can be rented by the day, week, or month. He states that at the time of his departure from Lompoc he informed the apartment manager that he would be interested in renting another unit around the beginning of June while looking for permanent housing. He

states that his former apartment had been rented in his absence but was available for occupancy when he returned to Lompoc on May 26.

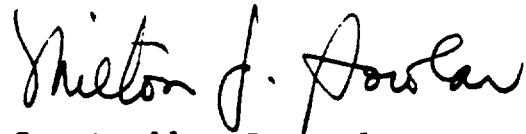
The certifying officer questions whether the apartment was in fact vacated. He points out that the lodging receipt for \$650 submitted by Mr. Kraus in support of his claim for temporary quarters expenses from May 26 to June 1 was dated April 30 and covers the entire month of May. He notes that this receipt is in the same form and for the same amount as the receipt Mr. Kraus submitted for the month of July 1984 and for the first month of his temporary duty assignment.

In our decision William B. Hendricks, B-199525, supra, we held that a temporary quarters subsistence expenses allowance may not be paid to an employee who had been detailed to the area of his new duty station and who, after the date of his transfer, continued to occupy the rental apartment in which he had resided during the detail. The holding was based on regulatory language similar to FTR paragraph 2-5.2c, quoted above, and on the finding that neither the employee nor his family had vacated the residence in which they were residing at the time the transfer was authorized.

In this case Mr. Kraus claims he vacated the apartment in Lompoc at the time of his return to Florida and that his reoccupancy of that particular apartment was largely fortuitous. However, we agree with the certifying officer that the evidence presented by Mr. Kraus in his claim for temporary quarters expenses does not support a conclusion that the quarters were vacated. While Mr. Kraus contends that the apartment complex was operated like a motel, he appears to have paid for the entire month of May and not to have received a refund for the period he alleges the apartment was rented to others during his absence. In computing his lodging costs for the 6 days of temporary quarters expenses in May, Mr. Kraus has divided the monthly rental rate by 31 days and provided a receipt dated April 30 showing rent paid for the entire month including his absence. If Mr. Kraus did vacate the unit, it appears he would have been charged a daily rate initially upon his return and received a refund either before departure or when the apartment was relet.

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Accordingly, on the present record Mr. Kraus' claim for temporary quarters expenses may not be paid. If Mr. Kraus can supply additional evidence to rebut the presumption that he did not vacate the apartment, the agency may reconsider his claim. Such evidence could include, but is not limited to, the following: evidence of a refund for the period he did not occupy the apartment, a receipt for storing his possessions while he returned to Florida to complete the transfer, or other evidence tending to show that he vacated the rented unit.



Acting Comptroller General
of the United States